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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LEON PITRE, Plaintiff and Appellant, v. COLLIN LAM AND KIMBERLY WONG, Defendants and Respondents.	A151061 (San Francisco City and County Super. Ct. No. CGC-15-547092)

Leon Pitre and Nicole DeLisi were served with an eviction notice after new owners purchased the four-unit building in which they rented an apartment. Believing the owners were violating the local rent control ordinance because their purported reason for the eviction was a pretext for the true motivation of increasing the rental value of the unit, Pitre and DeLisi sued, together with the former tenant of another unit who had been evicted previously. The jury returned a verdict in favor of Pitre and DeLisi. Prior to trial, the owners had extended settlement offers under Code of Civil Procedure section 998.[1] Pursuant to that statute, because Pitre failed to accept the offer and then failed to obtain a more favorable award at trial, he was ordered to pay the owners' attorney fees from the time of the offer. On this appeal, Pitre seeks reversal of the attorney fees award on two grounds: that the settlement offers were unreasonable and not made in good faith, and

[1] Further statutory references will be to the Code of Civil Procedure unless otherwise specified.

that the owners were not entitled to attorney fees due to a unilateral attorney fees provision in the rent control ordinance. We affirm.

BACKGROUND

In June 2014, respondents Collin Lam and Kimberly Wong purchased the four-unit building at 4441 Balboa Street in San Francisco. The building was subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Rent Ordinance) (codified as S.F. Admin. Code, ch. 37), and tenants occupied each of the four units. William Randt had lived in unit 2 since August 2008 and paid $1,370.18 per month in rent. Unit 3 was occupied by George Chan, and unit 4 by tenants who held protected status under the Rent Ordinance and paid monthly rent of $779.47. DeLisi had lived in unit 1 since September 2013, and paid $1,455 per month in rent; Pitre had moved in with DeLisi in January 2014, and did not contribute to the rent payments. Lam sent the tenants a letter introducing himself as the new owner of the building and requesting that rent payments be sent to his address at 279 11th Avenue.

On June 18, 2014, Lam served Randt with a "60 Day Notice of Termination of Tenancy" pursuant to section 37.9, subdivision (a)(8) of the Rent Ordinance, so that appellants could move into unit 2. Randt moved out on August 4.

On August 25, 2014, Chan voluntarily moved out of unit 3, having given notice of his intent to do so on August 1. Lam painted and refinished the wood floor of unit 3 and in mid-September, rented it for more than the rent Chan had been paying.

Respondents remodeled unit 2, making the one-bedroom, one-bath, apartment into a two-bedroom, two-bath. The parties disputed when respondents actually moved into the unit, which was across the hall from Pitre and DeLisi's. Respondents testified, and offered evidence to demonstrate, that they began to live in unit 2 in December 2014. Pitre and DeLisi testified respondents were not living in the building during the first half of 2015, and began to do so only after this lawsuit was filed in late July 2015. During the first half of the year, they occasionally saw Lam at the building and Wong more rarely, but did not hear the sounds of anyone living in unit 2, hear the garage door opening and closing or see lights in the living room area, and a pantry light was on "24/7," then after

the lawsuit was filed, respondents were at the building regularly and lights were on at night. Newspaper covered the windows of unit 2 until at least August 2015 and, according to some of the evidence at trial, November 2015.[2]

On June 11, 2015, DeLisi and Pitre were served with a 60-day notice of termination of tenancy stating respondents' intention to have Wong's brother, Jordan Wong, move into the unit. DeLisi and Pitre learned that an owner was supposed be living in the building in order to evict them for a relative move-in. They believed respondents were not living in the building when the eviction notice was served and, therefore, that the eviction was unlawful. They did not move out. DeLisi contacted Randt, and she, Pitre, and Randt filed the present lawsuit against respondents and Jordan Wong on July 29, 2015.[3]

On August 12, 2015, respondents filed an unlawful detainer action against DeLisi and Pitre, which ended with a settlement in October 2015, that allowed Pitre and DeLisi to remain in unit 1 until July 2016. They moved out of unit 1 on July 19, 2016.

Prior to trial, respondents made an offer to settle the case pursuant to section 998, which Pitre did not accept. Trial began on July 26, 2016. Alleging claims for violation of the owner move-in and relative move-in provisions of the intentional infliction of emotional distress, and intentional misrepresentation, the plaintiffs' theory was that both respondents' own move into unit 2 and Jordan Wong's move into unit 1 were actually motivated by respondents' desire to recover possession of the apartments from the rent-controlled tenants in order to rent them at market rates in the future.

Jordan Wong and his girlfriend Danilee Boozer moved into unit 1 at Balboa Street on August 1, 2016. According to the evidence at trial, prior to the notice of eviction being served on Pitre and DeLisi, and at the time of his October 2015 deposition, Jordan

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[2] The evidence at trial is not directly relevant to Pitre's appeal but is discussed at length in our opinions in related appeals taken by Randt from the judgment against him (*Randt v. Lam et al.*, A151062) and by Lam and Wong from the judgment in favor of DeLisi (*DeLisi v. Lam et al.*, A151014).

[3] The case was dismissed as to Jordan Wong during trial, on August 1, 2016,

Wong did not know anything about unit 1, its layout, how many bedrooms it had, or when he would be moving into it, and at the time of trial, he had not discussed with Lam whether he would be paying rent; he had enjoyed living in the apartment he and Boozer had previously occupied, which had a "sunset view," was rent-controlled, and had parking; and as late as April 2016, he and Boozer had discussed moving elsewhere for "a pretty solid job opportunity . . . possibly in the near future."

The jury's special verdict as to Pitre found, as to the Rent Ordinance, that appellants did *not* seek to recover possession of unit 1 in good faith, without ulterior reasons and with honest intent, for Jordan Wong's use or occupancy as his principal residence for a period of at least 36 continuous months, and that they acted in knowing violation or reckless disregard of the Rent Ordinance when they sought to recover possession of the apartment. The jury also found in Pitre's favor on the causes of action for interference with the quiet use and enjoyment of the apartment, bad faith under the rent ordinance, and intentional misrepresentation. With respect to intentional infliction of emotional distress, the jury found that respondents' conduct was not outrageous. The jury found economic damages of $750 for moving expenses plus and noneconomic damages of $10,000 for past mental or emotional damages, for a total of $10,750. Pursuant to the Rent Ordinance, damages were trebled, resulting in a judgment in favor of Pitre for $32,250.

Pursuant to section 998, the trial court awarded Pitre $5,857.19 in attorney fees for work performed before the date of respondents' pretrial settlement offer, and awarded respondents' $47,564 in attorney fees against Pitre for work performed after the date of the settlement offer. As a result, an amended judgment was entered in respondents' favor in the amount of $9,456.81.

DISCUSSION

Pitre argues that the trial court award of attorney fees must be reversed because the section 998 settlement offers were unreasonable and not made in good faith, and because the owners were not entitled to attorney fees due to a unilateral attorney fees provision in the rent control ordinance.

I.

Code of Civil Procedure section 998 provides that if a settlement offer made by a defendant not less than 10 days before trial is not accepted and the plaintiff fails to obtain a more favorable judgment, "the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer." (§ 998, subd. (b), (c)(1).) " 'As a general rule, the prevailing party in a civil lawsuit is entitled to recover its costs. (Code Civ. Proc., § 1032.) However, section 998 establishes a procedure for shifting the costs upon a party's refusal to settle. If the party who prevailed at trial obtained a judgment less favorable than a pretrial settlement offer submitted by the other party, then the prevailing party may not recover its own postoffer costs and, moreover, must pay its opponent's postoffer costs . . . . (§ 998, subd. (c)(1).)' " (*Ignacio v. Caracciolo* (2016) 2 Cal.App.5th 81, 86 (*Ignacio*), quoting *Barella v. Exchange Bank* (2000) 84 Cal.App.4th 793, 798.) "Thus, under section 998, a defendant whose pretrial offer is greater than the judgment received by the plaintiff is treated for purposes of postoffer costs as if it were the prevailing party." (*Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1112.) The costs recoverable pursuant to section 998 include attorney fees if there is a contractual or other statutory basis for them. (*Id.* at p. 1113; *Ford Motor Credit Co. v. Hunsberger* (2008) 163 Cal.App.4th 1526, 1532.)

Respondents' offered to pay Pitre $50,000, plus attorney fees and costs, in exchange for a dismissal of the lawsuit with prejudice and execution of the following release:

"For and in consideration of the sum of Fifty Thousand Dollars ($50,000), plus statutory costs and plus attorneys' fees, I release and forever discharge COLLIN LAM, KIMBERLY WONG, and JORDAN WONG, from any and all rights, claims, demands, harms, and/or damages of any kind, known or unknown, EXCEPT CLAIMS FOR COSTS AND ATTORNEYS FEES, in which LEON PITRE has asserted and/or alleged to have sustained injury, harm, and/or damages as described in the pleadings and papers on file in the legal action now pending in San Francisco County Superior Court, Case Number CGC-15-547092 entitled *DeLisi v. Lam, et al.* [¶] This release expressly

reserves my right to claim statutory costs and to claim attorneys' fees. I do not waive any rights to claim costs and attorneys fees by signing this release."

The judgment Pitre obtained at trial—$32,250—was obviously not more favorable than the section 998 offer. Pitre argues, however, that the offer was unreasonable and not made in good faith in that it improperly required a release of "all claims 'known and unknown,' " it was made prematurely, before written discovery and depositions were completed, and it was made by respondents but required the release of claims against Jordan Wong as well. "Whether a settlement offer was reasonable and made in good faith is a question within the sound discretion of the trial court." (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 767 (*Fassberg*).)

"An offer to compromise under Code of Civil Procedure section 998 must be sufficiently specific to allow the recipient to evaluate the worth of the offer and make a reasoned decision whether to accept the offer. (*Berg v. Darden* (2004) 120 Cal.App.4th 721, 727; *Taing v. Johnson Scaffolding Co*. (1992) 9 Cal.App.4th 579, 585.)" (*Fassberg, supra,* 152 Cal.App.4th at p. 764.) "[A] section 998 offer requiring the release of claims and parties not involved in the litigation is invalid as a means of shifting litigation expenses." (*McKenzie v. Ford Motor Co.* (2015) 238 Cal.App.4th 695, 706–707.) But "a release of unknown claims arising only from the claim underlying the litigation itself does not invalidate the offer." (*Ignacio, supra,* 2 Cal.App.5th at p. 89.) The release here was limited to "rights claims, demands, harms, and/or damages . . . in which Leon Pitre asserted and /or alleged to have sustained injury, harm, and/or damages *as described in the pleadings and papers on file in the legal action now pending in San Francisco County Superior Court, Case Number CGC-15-547092 entitled DeLisi v. Lam, et al.*" The limitation to the underlying litigation is clear.

Pitre argues that the limiting language of the release is vague and would include potential claims that could not have been asserted in the present action. He relies upon *Ignacio, supra,* 2 Cal.App.5th 81, which he describes as finding a section 998 offer invalid because language attempting to limit the release to the accident at issue in the

lawsuit in fact included claims outside that litigation. The proposed release in *Ignacio* was two pages long, single spaced, and referred to " 'any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, damages, judgments, orders, and liabilities *of whatever kind and nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, that have existed or may have existed or which do exist, or which hereinafter can, shall or may exist, including but without, in any respect, limiting the generality of the foregoing,* any and all claims that were, or might, or could have been alleged in connection with an accident that occurred on or about April 10, 2013, and are the subject of the lawsuit entitled *Ignacio v. Caracciolo*, filed in the Los Angeles Superior Court, bearing case number BC511878.' " (*Ignacio,* at pp. 84, 89, some italics added.) The *Ignacio* court rejected the defendant's argument that the language referring to claims that were or could have been alleged in connection with the accident limited the release to the claims at issue in the current lawsuit, explaining that "this argument takes the language out of the context of the release, utterly ignoring the part of the release we have italicized above. The release does not say it is 'limited to' such accident-related claims; it says the opposite. The general release includes, but is not in any way limited to, accident-related claims." (*Id.* at p. 90.) The release in the present case is entirely different, and unambiguous in its limitation of claims.

Pitre also points to the *Ignacio* court's discussion of the plaintiff having identified in the trial court a claim that would be encompassed by the release but was not related to the accident and could not have been brought in the pending suit—a claim for violation of the plaintiff's privacy rights during the investigation of his claim. (*Ignacio*, *supra*, 2 Cal.App.5th at p. 90.) Pitre asserts that the release here would have required him to waive clams for personal injury and habitability that arise from the complaint, but he offers no suggestion how the facts of this case could give rise to such claims. Pitre did not suggest the possibility of such claims in the trial court. He did not make a timely objection to the settlement offer, and these potential claims were not raised in the belated objection he submitted to the trial court in connection with his opposition to respondents'

request for attorney fees, his brief in the trial court, or his argument to the trial court. Pitre also asserts—for the first time in his reply brief on this appeal—that the release would have required him to waive the potential claim he would have if unit 1 was vacated and respondents re-rented it within three years without first offering it to Petri, as required by section 37.9B of the Rent Ordinance. "Points raised for the first time in the reply brief are generally not considered, out of fairness to the respondent." (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1072; *Ritter & Ritter, Inc. Pension & Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103, 129.) Putting aside the fact that neither respondents nor the trial court were given a chance to consider the point, we fail to see how this potential claim was "not capable of valuation at the time the offer was made," as Petri maintains. It was certainly a foreseeable claim that Petri could have anticipated and considered in evaluating what he would have been giving up by accepting the settlement offer.

Pitre's additional arguments are also unpersuasive. "A 998 offer is made in good faith only if the offer is ' "realistically reasonable under the circumstances of the particular case " ' [citation]—that is, if the offer ' "carr[ies] with it some reasonable prospect of acceptance" ' [citation]." (*Licudine v. Cedars-Sinai Medical Center* (2019) 30 Cal.App.5th 918, 924.) One consideration is whether the offeree, at the time of the offer, had or should have had sufficient information to assess whether the offer was reasonable. (See *Licudine*, at pp. 924–925.) Pitre's complaint is that the offer was made four months after the action was filed and prior to completion of discovery. But the parties had litigated and settled an unlawful detainer action prior to the settlement offer, and his belated objection to the offer, dated April 19, 2016, came more than five months after the offer was made and four months after it had expired by the terms of section 998, subdivision (b)(2). Whether the party receiving a section 998 offer "alert[ed] the offeror that it lacked sufficient information to evaluate the offer" is another consideration bearing on the reasonableness of the offer. (*Licudine*, at p. 926.) The trial court did not abuse its discretion in rejecting Pitre's argument that the offer was unreasonable or made in bad faith due to being made prematurely.

Finally, Pitre argues that the inclusion of Jordan Wong in the release added to the vagueness and difficulty of evaluating the settlement offer because there was no way for Pitre to know how a verdict in Jordan Wong's favor would be counted in determining whether a trial judgment was more favorable than the section 998 offer. For example, Pitre suggests that if he obtained a verdict of $20,000 against each of the three defendants, his overall judgment would have been more favorable than the $50,000 offer, but Lam and Wong would be able to argue that only the $40,000 judgment against them should be considered because only they were parties to the $50,000 offer.

Again, Pitre failed to make a timely objection to the settlement offer. Nor did his eventual challenge to the reasonableness of the offer in connection with respondents' motion for attorney fees, in his brief or oral argument to the trial court, include any argument that the release was invalid due to its requirement that claims against Jordan Wong be dismissed despite Jordan Wong not being a party to the settlement offer. Pitre can hardly claim the trial court abused its discretion on the basis of an argument he did not ask the trial court to consider.[4]

Pitre also suggests that accepting the offer would have required him to dismiss the case against Jordan Wong but, since Jordan Wong did not make the 998 offer, he would remain free to seek costs and attorney fees against Pitre as a prevailing party once the case was dismissed. Again, this argument was raised only in Pitre's reply brief on this appeal. We find no reason to depart from the general rule that such points are not considered. (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.*, *supra*, 158 Cal.App.4th at p. 1072.)

II.

Pitre's second argument is that the attorney fees order should be reversed in its entirety, or reduced, because one of the provisions of the Rent Ordinance respondents

[4] We find no reason to further consider this issue. It should not go unstated, however, that respondents' brief has offered no assistance to the court, as it provides no response to the arguments Pitre did make concerning the inclusion of Jordan Wong in the release, not even to suggest the arguments should be considered forfeited.

relied upon in requesting attorney fees allows only prevailing plaintiffs, not prevailing defendants, to recover attorney fees. Respondents sought attorney fees under the San Francisco Administrative Code sections 37.9 and section 37.10B. Section 37.9, subdivision (f), provides that in a civil proceeding challenging a landlord's wrongful attempt to recover possession in violation of sections 37.9 and/or 37.10A, "[t]he prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court." Section 37.10B, subdivision (c)(5), provides that in a suit for violation of the ordinance's tenant harassment provisions, "a prevailing *plaintiff* shall be entitled to reasonable attorney's fees and costs pursuant to order of the court." Pitre argues that because the claims under the two sections of the Rent Ordinance were intertwined, the attorney fees provision of section 37.10B, subdivision (c)(5), precludes an award of fees to a prevailing defendant under section 37.9, subdivision (f).

Section 37.10B, subdivision (c)(5) of the San Francisco Administrative Code, is a "unilateral fee-shifting provision" that does not permit a prevailing *defendant* to recover attorney fees. (See *Carver v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 498, 503 (*Carver*).) Such nonreciprocal provisions "are created by the Legislature as a deliberate stratagem to encourage more effective enforcement of some important public policy." (*Wood v. Santa Monica Escrow Co.* (2007) 151 Cal.App.4th 1186, 1191; *Carver,* at p. 504.) "The statutory language authorizing fee awards only to prevailing plaintiffs reflects a determination that prevailing defendants should *not* receive a fee award for hours spent defending such claims." (*Turner v. Association of American Medical Colleges* (2011) 193 Cal.App.4th 1047, 1060 (*Turner*).)

When there is "inextricable overlap" between claims subject to a unilateral attorney fees provision and claims for which a prevailing defendant ordinarily would be able to recover attorney fees, courts have held that the prevailing defendant may not be awarded fees. (*Turner, supra,* 193 Cal.App.4th at p. 1071 [unilateral fees in private actions for damages for violations of civil rights and disability discrimination; bilateral fees in private action for injunctive relief]; *Carver, supra,* 119 Cal.App.4th at p. 504 [unilateral fees for antitrust claims; bilateral fees for contract claims]; *Wood v. Santa*

Monica Escrow Co., supra, 151 Cal.App.4th at p. 1191 [unilateral fees for elder abuse claims; bilateral fees for other tort claims].) Allowing prevailing defendants to recover attorney fees for work on claims subject to a unilateral fee provision would frustrate the legislative intent because it might "lead to fewer lawsuits and less effective enforcement," as " '[i]njured people contemplating a lawsuit would confront the prospect of having to pay the defendant's legal fees as well as their own in the event they lost. This would make the bet even less appealing where the potential recovery was modest or where the chances of winning were good but uncertain.' " (*Turner,* at p. 1060, quoting *Covenant Mutual Ins. Co. v. Young* (1986) 179 Cal.App.3d 318, 325–326.) As the court in *Carver* explained, "[t]o allow Chevron to recover fees for work on Cartwright Act issues simply because the statutory claims have some arguable benefit to other aspects of the case would superimpose a judicially declared principle of reciprocity on the statute's fee provision, a result unintended by the Legislature, and would thereby frustrate the legislative intent to 'encourage improved enforcement of public policy.' " (*Carver,* at p. 504, quoting *Covenant,* at pp. 325–326.)

Pitre argues that the same considerations of encouraging enforcement should preclude respondents from recovering attorney fees because the Board of Supervisors, "in enacting the [Rent Ordinance], clearly intended for there to be no fees awarded to a defendant under 37.10B." He points to *Turner, supra,* 193 Cal.App.4th 1047, which involved claims for damages under the Unruh Civil Rights Act and the Disabled Persons Act (DPA) for which attorney fee awards were authorized only for prevailing plaintiffs (Civ. Code, §§ 52, 54.3), and also a claim for injunctive relief under the DPA for which attorney fees are to be awarded to the prevailing party (Civ. Code, § 55). *Turner* considered a number of factors, including the policy issues described above, and concluded that unilateral fee provisions of Civil Code sections 52 and 54.3—which were enacted subsequent to enactment of Civil Code section 55—created an exception to Civil Code section 55 and prohibited a fee award under that statute to a prevailing defendant for the same hours spent on defending claims under Civil Code sections 52 and 54.3. (*Turner,* at p. 1054.) Pitre argues that the unilateral fee provision in section 37.10B,

which was enacted in 2008, should similarly prevail over the bilateral provision in section 37.9 of the Rent Ordinance, which preexisted this enactment.

We disagree. Pitre's claims against respondents all derived from the alleged violation of the San Francisco Administrative Code section 37.9, subdivision (a)(8), which establishes the requirements for a relative move-in eviction. Section 37.10B, entitled "Tenant Harassment," prohibits a landlord from engaging in specified conduct "in bad faith." The 15 paragraphs of subdivision (a) of section 37.10B describe conduct such as failing to provide required housing services, repairs and maintenance, attempting to influence a tenant to vacate a rental unit through fraud, intimidation or coercion, threatening a tenant with physical harm and interfering with a tenant's privacy. (§ 37.10B, subds. (1), (2), (3), (5), (6), (8), (13), (14).) The only conduct described in this provision that could have fit the present case is "[i]nterfere with a tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law." (§ 37.10B, subd. (a)(10).) But on the facts of this case, and as alleged in the complaint, the only way in which respondents allegedly interfered with Pitre's right to quiet use and enjoyment of his apartment was by unlawfully evicting him through an improper relative move-in. In other words, Pitre's claim under section 37.10B was entirely derivative of his claim under the San Francisco Administrative Code section 37.9. Section 37.9, subdivision (f), calls for an award of attorney fees to the prevailing party. Pitre's argument attempts to defeat this provision by reliance on a provision that could not have played any independent role in the litigation.

The situation is in a sense the opposite of that in *Turner*. One of the arguments made by the prevailing defendant in that case was that the plaintiffs could have avoided the risk of a fee award in its favor by electing to forego injunctive relief under Civil Code section 55, thus avoiding the bilateral attorney fee provision. *Turner* held this did "not justify, as matter of public policy, a [Civil Code] section 55 fee award to a prevailing defendant that concedes it did not incur even one extra hour of attorney fees defending the section 55 claim. To award fees under section 55 would frustrate the purposes of the unilateral fee-shifting provisions in [Civil Code] sections 52 and 54.3, and in this case

impose a crushing fee award on civil rights plaintiffs who did not even seek damages from defendant. Moreover, such an award would also undermine enforcement of section 55, which benefits all disabled persons, by discouraging future plaintiffs from including claims for injunctive relief under section 55, even where inclusion of the claim would not increase the burden of the litigation. It is reasonable to conclude the Legislature intended to discourage the filing of meritless lawsuits under section 55, but there is no reason to believe the Legislature intended to discourage requests for injunctive relief under section 55 that add nothing to the defendant's litigation burden." (*Turner, supra*, 193 Cal.App.4th at p. 1071.)

Here, Pitre is attempting to avoid the bilateral fee provision applicable to the central claim in his case, without which none of the other claims would exist, by invoking the fee provision applicable to an entirely derivative claim that could not have "increase[d] the burden of the litigation." (*Turner, supra,* 193 Cal.App.4th at p. 1071.) The concerns discussed in *Turner* and other cases about undermining a legislative intention to encourage private enforcement in a particular area do not apply in these circumstances. Certainly, the inclusion of a unilateral attorney fee provision in section 39.7B reflects legislative intent to encourage aggrieved tenants to bring their harassment claims to court. But it is clear from the ballot pamphlet for the proposition by which section 37.10B was added to the Rent Ordinance that the fundamental public policy the "tenant harassment" provisions were intended to support was prevention of harassment in the sense of intimidation and coercion undertaken to cause a tenant to vacate a rental unit.[5] Pitre's claims were based on an alleged failure to follow the requirements for a valid relative move-in eviction under San Francisco Administrative Code section 37.9, subdivision (a)(8). The policy objectives of the unilateral attorney fee provision in section 37.10B is not frustrated by an award of fees under section 37.9 in a case based on

[5] Pitre's unopposed request for judicial notice of portions of the Voter Information Pamphlet pertaining to Measure M, presented to voters for the November 2008 election, is hereby granted. (Evid. Code, §§ 452, 459; *Vargas v. City of Salina* (2009) 46 Cal.4th 1, 22, fn. 10.)

violation of the requirements imposed by section 37.9 for lawful evictions and lacking any evidence of other harassment.[6]

DISPOSITION

The judgment is affirmed.

Costs to respondents.

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[6] Pitre appears to suggest that respondents are at fault for the allegedly erroneous attorney fee award because they sought attorney fees under both section 37.9 and section 37.10B, the court "was unaware of the two different fee provisions and awarded respondent fees without consideration of those relating to intertwined work," and respondents "made no effort to separate out fees for each claim."

This attempt to put the onus on respondents is particularly misplaced, as Pitre not only failed to object to an award of attorney fees for work on intertwined claims but affirmatively agreed when respondents' asserted San Francisco Administrative Code section 37.9, subdivision (f), as authority for their fee request. The transcript reflects that the trial court initially focused on the unilateral provision in section 37.10B, to which Pitre's brief had pointed, and was then advised by respondents that the applicable provision was section 37.9, subdivision (f). When asked for a response, Pitre's attorney agreed that the latter section authorized an award of fees (although he argued against an award for different reasons).

It was Pitre's responsibility to raise the issue of intertwined fees if he wanted to challenge the award on this basis. As he failed to do so, we could, and generally would, consider the issue forfeited. (*Children's Hosp. & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 776–777.) We have exercised our discretion to reach the issue here because of its significance and the facts that respondents did not point out the failure to object below and instead addressed the issue on the merits.

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Kline, P.J.

We concur:

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Stewart, J.

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Miller, J.

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